

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

SERVICE EMPLOYEES' INTERNATIONAL	)	
UNION, LOCAL 50,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Public Case No. 81-010
	)	
ST. LOUIS PUBLIC LIBRARY SYSTEM,	)	
ST. LOUIS, MISSOURI,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon Local 50 Service Employees' International Union (Petitioner), filing a petition for certification as exclusive bargaining representative for all full-time and regular part-time employees, excluding supervisors and managerial employees employed by the St. Louis Public Library System (Respondent). The parties are in agreement as to the appropriate unit except that Respondent contends that those employees employed in the classification of Utilities and Maintenance Mechanic I, Building Maintenance Carpenter, and Building Maintenance Mechanic I, should be excluded from the bargaining unit because they do not share a community of interest with the other employees included in the unit. Respondent further contends that those employees designated as Seconds-in-Charge should be excluded from the bargaining unit because they are supervisors. On September 15, 1981, a hearing was held in Clayton, Missouri at which representatives from Local 50 and the St. Louis Public Library were present. The case was heard by State Board of Mediation Chairman Mary Gant, employer member William Hunker, and employee member Robert Missey. Because subsequent to the hearing employee member Robert Missey's term expired, the case was submitted by transcript to new

employee member Charles Yaeger. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by virtue of Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

The St. Louis Public Library System is a duly organized public library system and is a "public body" as defined by Section 105.500, RSMo 1978. The library system consists of a main library in downtown St. Louis, and 14 branch libraries throughout the city of St. Louis. The system is headed by the Librarian/Executive Director. Reporting directly to the Librarian/Executive Director are Managers in charge of each of the branch libraries. Immediately subordinate to the Managers of each of the branch libraries and the main library are those employees designated as Seconds-in-Charge.

The main library is open 52 hours per week while the branch libraries are open from 51 to 65 hours per week. Since all employees are scheduled to work only 40 hours per week and supervision is necessary whenever the libraries are open, the Second-in-Charge must assume the duties and responsibilities of the Department Head or the Branch Managers from 11 to 25 hours per week.

The library currently employs 21 Seconds-in-Charge, two being classified as Assistant Supervisors, with the other 19 classified a Librarian I, Librarian II, or Librarian Technician II. Almost all employees classified as Librarian I and Librarian II are also Seconds-in-Charge.

Those designated as Second-in-Charge do not receive additional compensation during the periods of time when the Branch Library Supervisor or Department Head is not present. The only instance in which they do receive a pay increase is when the

Second-in-Charge fills in for the Branch Library Supervisor or Department Head for a period in excess of 22 consecutive days, wherein the Second-in-Charge is paid a 50% salary differential.

During the hours when the schedules of the Branch or Department Supervisor and the Second-in-Charge overlap, the Second-in-Charge spends approximately 20% of the shift performing supervisory duties. When a Second-in-Charge is the only supervisor present, an even more substantial part of his or her time is spent actively supervising the work of other employees.

In exercising their duties, the Second-in-Charge employees may administer discipline, reschedule employees, call in replacements, grant or deny time off, assign overtime, set task priorities, authorize leave time, handle pay sheets, assist in training employees, counsel employees and participate in performance evaluations. These activities require the use of independent judgment and discretion and may be accomplished without prior authorization from the Department Head or Branch Librarian.

The St. Louis Public Library System employs six maintenance employees with carpentry, electrical and plumbing skills. Their duties include the repair and maintenance work on buildings and equipment throughout the library system. The provisions of the Personnel Policy Manual, applicable to other employees that Petitioner seeks to represent, are also applicable to these employees. These provisions include rules governing disciplinary action, employee service rating, equal employment opportunity, funeral leave, grievance procedure, group insurance, holidays, job posting, jury duty, maternity leave, overtime, pension plan, sick leave, the suggestions award program, transfers and layoffs, breaks, and unpaid leaves of absence. They are eligible for election to the same grievance committee as are other employees. These employees are compensated according to the Labor and Trade Salary Schedule as are drivers, automobile mechanics, custodians, and guard-clerk-cleaners, who are included in the bargaining unit sought by Petitioner.

## **CONCLUSIONS OF LAW**

Local 50 has petitioned to be certified as the public employee representative of a bargaining unit comprised of all full-time and all regular part-time nonsupervisory employees of the St. Louis Public Library. Local 50 argues that those employees designated as Second-in-Charge are not supervisors and therefore should be included in the bargaining unit. The Respondent contends that the Second-in-Charge employees are supervisory employees who act directly and indirectly in the interest of the Library District relation to the other employees.

The State Board of Mediation recognizes that certain employees possess sufficient supervisory status to warrant their exclusion from a bargaining unit of other employees. In St. Charles Professional Firefighters Local 1921 v. City of St. Charles, Public Case 79-024 (SBM 1979), and Teamsters Local 610 v. Afton Fire Protection District, Public Case No. 81-007 (SBM 1981), among other cases, the Board has articulated factors to consider in determining the supervisory status of employees. The effort to determine whether a particular employee is a true "supervisor", whose duties involve acting directly or in directly in the interest of the employer in relation to other employees, or whether the employee is merely a working foreman whose responsibilities would not justify exclusion from an appropriate bargaining unit. The factors to be considered in making this determination include: (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees; (2) the authority to direct and assign the work force including a consideration of the amount of independent judgment or discretion involved in such decisions; (3) the number of employees supervised and the number of other persons exercising greater, similar or lesser authority with respect to the same employees; (4) the level of pay, including an evaluation of whether a person is paid for his or her skill or for his or her supervision of other employees; (5) whether a person primarily supervises an activity or primarily supervises other employees; (6) whether a person is a working

supervisor or whether he or she spends a substantial majority of work time overseeing others. Important in the Boards decision in determining supervision status is the amount of independent judgment an employee is allowed in directing and assigning the work force. International Association of Firefighters Local 7709 v. Liberty Fire Department of Liberty, Missouri, Public Case No. 80-006 (SBM 1980). It is clear from the evidence that the Seconds-in-Charge spend a substantial part of their time doing just that. For at least eleven to twenty-five hours per week the Second-in-Charge is the only person available to ensure that the library functions smoothly. This often requires the Second-in-Charge to use his or her judgment and careful discretion in dealing with subordinate employees. The Second-in-Charge spends a substantial part of his or her work time making decisions that require independent judgment and discretion plus the duties as set out in more detail in the Statement of Facts indicates that the Seconds-in-Charge are true supervisors to be excluded from the bargaining unit.

Respondent's second argument involves 6 maintenance department employees classified as Utilities and Maintenance Mechanic I, Building Maintenance Carpenter, and Building Maintenance Mechanic I. Respondent contends that those employees do not have a sufficient community of interest with the other St. Louis Public Library employees to be included within the bargaining unit.

An appropriate bargaining unit is defined by Section 105.500(1), RSMo 1978 as:

"a unit of employees at any plant of installation or in a craft or in a function of a public body which establishes a clear and identifiable "community of interest" among the employees concerned,"

In Service Employees International Union, Local 96 AFL-CIO v. City of Blue Springs, Missouri, Public Case No. 79-031 (SBM 1980), the Board looked to several factors in determining whether employees have such a community of interest. These factors include the amount of interchange among the employees concerned, similarities in pay, fringe benefits and type of work, and whether or not there is common supervision.

Another factor in determining community of interest questions is the danger of overfragmentation of bargaining units. Service Employees' International Union, Local 50 v. City of Springfield, Missouri, Public Case No. 79-013 (SBM 1979). A review of these factors as a whole indicates that those employees in the classification of Utilities and Maintenance Mechanic I, Building Maintenance Carpenter, and Building Maintenance Mechanic I, do share a community of interest with the other full-time and regular part-time employees in the St. Louis Library System as to be included in the bargaining unit.

The evidence shows that there is much similarity in pay and in the fringe benefits afforded all library employees. For instance, the grievance procedure applicable to all employees is also applicable to the craft employees. Further, the craft employees are entitled to vote are members of the grievance committee, and are allowed to serve as one of the representatives from the main library as are the other employees.

The employees in question are compensated in accordance with a salary schedule known as the Labor and Trade Schedule, which also governs the compensation of the Driver-Auto Mechanic, Custodians, and Guard-Clerk-Cleaner, all of whom are included in the unit by agreement of the parties. It is clear from the facts given that all of the employees are covered by the same provisions in the Library's Personnel Policy Manual regarding fringe benefits and other terms of employment. The Board recognizes that the type of work done by the employees in question is different than that done by the librarians. However, the unit also includes Custodians, Driver-Auto Mechanics, and Guard-Clerk-Cleaners. The Board would, after noting the diversity of jobs in the unit, find it very difficult to exclude the employees in question based on the type of work they do.

It is also clear from the evidence that all employees share common supervision. Although the immediate supervision may be different, all employees are under the

supervision of the Divisional Manager, and to carry it a step further, the Librarian/Executive Director.

The last factor applicable to this case is the issue of overfragmentation of bargaining units. To exclude the craft employees from the bargaining unit sought by Petitioner would result in the formation of a separate unit comprised of only 6 employees. Respondent would have us believe that a separate unit is necessary because of the difference in skills and duties of these employees as compared to those of the other member of Petitioner's bargaining unit. However, employees that possess skills and duties not shared by other employees will require separate representation only when it is necessary to protect their right to effective bargaining. Service Employees v. City of Springfield, Missouri (supra). Given the similarities in fringe benefits, salary, and terms of employment, it is clear that the Petitioner's proposed unit will protect the bargaining rights of the six employees in question.

In view of the foregoing the Board concludes that the employees classified as Utilities and Maintenance Mechanic I, Building Maintenance Carpenter, and Building Maintenance Mechanic I are to be included in the bargaining unit sought by Petitioner.

### **DECISION**

The decision of the State Board of Mediation is that an appropriate unit of employees is as follows:

All nonsupervisory employees of the St. Louis Public Library System excluding employees designated as Second-in-Charge but including employees in the job classifications of Utilities Maintenance Mechanic I, Building Maintenance Carpenter, and Building Maintenance Mechanic I.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation or a designated agent among the employees in the unit found

appropriate, as early as possible, but no later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill or on vacation. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Petitioner, Service Employees' International Union, Local 50.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Signed this 5th day of March, 1982.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant  
Mary L. Gant, Chairman

/s/ William Hunker  
William Hunker, Employer Member

/s/ C. J. Yaeger See Dissent  
Charles J. Yaeger, Employee Member



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**CERTIFICATION**

I hereby certify that I have read the full record, including all the evidence and exhibits.

/s/ C. J. Yaeger  
Charles J. Yaeger, Employee Member  
State Board of Mediation

State of Missouri                    )  
  ) SS.  
County of Jackson                )

I, /s/ L. K. Weber, a Notary Public do hereby certify that on this 15th day of March, 1982, personally appeared before me C. J. Yaeger, who, being first duly sworn, declared that all of the information contained herein above is true.

/s/ L. K. Weber  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

L.K. Weber  
Notary Public - State of Missouri  
Commissioned in Clay County  
My Commission Expires April 18, 1982

## **Dissenting Opinion**

This Board member agrees that the 6 Maintenance Department Employees classified as Utilities and Maintenance Mechanic I, Building Maintenance Carpenter, and Building Maintenance Mechanic I, should be included in the Bargaining Unit.

I do have a disagreement with the other Board members that the Seconds-in-Charge are "True Supervisors".

It is common knowledge and practice throughout the Private and Public Sectors that relief for Supervisors, whatever the length of time or reason may be, normally comes from the Bargaining Unit. Many Collective Bargaining Agreements address this. The Relief Supervisors are protected from the charges and fines from Local Union's, while acting in behalf of Management.

This Board member believes that the "Second-in-Charge" should be included in the Bargaining Unit.

Yours very truly,

/s/ C.J. Yaeger

C. J. Yaeger, Employee Member  
Mo. State Board of Mediation